MONTANA LEGISLATIVE HISTORY

Chapter 609 1993

Bill H _____ S 342 Original bill & history X C

H. Committee on LABOR & EMPLOYMENT			S. Committee on LABOR & EMPLOYMENT		
Hearing Date(s)	3/9	X C	Hearing Date(s)	2/18	X C
EXEC ACTION	3/11	X C	EXEC ACTION	2/20	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Conference Committee: 4/19

3/29	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	65	34
4/01	3RD READING CONCURRED	71	28
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS CONCURRED	48	2
4/06	3RD READING AMENDMENTS CONCURRED	32	18
4/14	SIGNED BY PRESIDENT		
4/14	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/20	VETOED		
4/22	VETO OVERRIDE MOTION FAILED	61	38

SB 340 INTRODUCED BY DOHERTY, ET AL.

ESTABLISH POLICY ON RESIDENTIAL ENERGY EFFICIENCY

BY REQUEST OF ENVIRONMENTAL QUALITY COUNCIL

2/09	INTRODUCED		
2/09	REFERRED TO NATURAL RESOURCES		
2/09	FIRST READING		
2/09	FISCAL NOTE REQUESTED		
2/15	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED		
2/20	2ND READING PASSED	47	3
2/22	3RD READING PASSED	44	4
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/23	FIRST READING		
3/12	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	82	9
3/30	3RD READING CONCURRED	90	7
	RETURNED TO SENATE		
4/03	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/13	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 383		
	EFFECTIVE DATE: 10/01/93		

SB 341 INTRODUCED BY YELLOWTAIL, ET AL.

AUTHORIZE FISH, WILDLIFE, AND PARKS COMMISSION AND BOARD OF OUTFITTERS TO ADOPT AND ENFORCE RULES FOR USE OF LAKES AND STREAMS

2/09	INTRODUCED		
2/09	REFERRED TO FISH & GAME		
2/09	FIRST READING		
2/16	HEARING		
2/18	TABLED IN COMMITTEE		

SB 342 INTRODUCED BY WILSON, ET AL.

REVISE THE LITTLE DAVIS-BACON ACT CONCERNING PUBLIC CONTRACT WAGE VIOLATIONS

2/09	INTRODUCED		
2/09	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/09	FIRST READING		
2/09	FISCAL NOTE REQUESTED		

2/15	FISCAL NOTE RECEIVED		
2/18	HEARING		
2/18	FISCAL NOTE PRINTED		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	45	4
2/24	3RD READING PASSED	41	7
	TRANSMITTED TO HOUSE		
3/01	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/01	FIRST READING		
3/09	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	90	3
3/30	3RD READING CONCURRED	92	8
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS NOT CONCURRED	25	24
4/07	CONFERENCE COMMITTEE APPOINTED		
4/22	CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/22	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	43	5
	HOUSE		
4/13	CONFERENCE COMMITTEE APPOINTED		
4/22	CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	94	4
4/22	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	99	1
4/28	SIGNED BY SPEAKER		
4/28	SIGNED BY PRESIDENT		
4/28	TRANSMITTED TO GOVERNOR		
5/03	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 609		
	EFFECTIVE DATE: 05/03/93		

SB 343 INTRODUCED BY SWIFT, ET AL.

GENERALLY REVISE MONTANA SUBDIVISION AND PLATTING ACT

2/09	INTRODUCED		
2/09	REFERRED TO NATURAL RESOURCES		
2/09	FIRST READING		
2/09	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	TABLED IN COMMITTEE		

SB 344 INTRODUCED BY WATERMAN

CLARIFY WHEN EVALUATIONS ARE REQUIRED IN PRESENTENCE INVESTIGATIONS

2/09	INTRODUCED		
2/09	REFERRED TO JUDICIARY		
2/09	FIRST READING		
2/20	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	49	0
2/24	3RD READING PASSED	48	0

SENATE BILL NO. 342

INTRODUCED BY WILSON, DRISCOLL

IN THE SENATE

FEBRUARY 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 22, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 23, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 24, 1993	THIRD READING, PASSED. AYES, 41; NOES, 7.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 92; NOES, 8.
MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 7, 1993	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 13, 1993 — ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

APRIL 22, 1993 — CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 22, 1993 — SECOND READING, CONFERENCE COMMITTEE REPORT ADOPTED.

THIRD READING, CONFERENCE COMMITTEE REPORT ADOPTED.

APRIL 23, 1993 — SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senator BILL NO. 342

INTRODUCED BY Gillan Driscoll

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LITTLE DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS ON PUBLIC CONTRACTS; REVISING PROCEDURES FOR WAGE CLAIMS; PROVIDING FOR PROCEEDINGS ON PAYMENT OF PREVAILING WAGE RATES BEFORE A DEPARTMENT OF LABOR AND INDUSTRY HEARING OFFICER; AMENDING SECTIONS 18-2-401, 18-2-403, 18-2-407, 18-2-411, 18-2-423, 18-2-424, AND 18-2-432, MCA; REPEALING SECTION 18-2-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Method for payment of standard prevailing wage. (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, travel, and other bona fide programs approved by the United States department of labor, that is applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or other bona fide programs approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

(4) Contractors or subcontractors subject to a collective bargaining agreement may deduct from the total wage package fringe benefits for health and welfare and pension contributions, travel, and other bona fide programs approved by the United States department of labor. This section does not relieve a contractor or subcontractor not

subject to a collective bargaining agreement from paying workers or employees in cash the basic hourly rate of pay as determined by the commissioner pursuant to 18-2-402.

Section 2. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is ~~hereby declared to be~~ a person who, at the time of ~~his~~ employment and immediately prior thereto to the time of employment, has lived in this state in ~~such~~ a manner and for ~~such~~ a time as that is sufficient to clearly justify the conclusion that ~~his~~ the person's past habitation in this state has been coupled with an intention to make it ~~his~~ the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform ~~such~~ labor ~~shall under no circumstance~~ may not be deemed considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "District" means a prevailing wage rate district established as provided in 18-2-411.

(5) "Heavy and highway construction wage rates" means

wage rates, including fringe benefits for health and welfare and pension contributions, and travel ~~allowance provisions~~, and other bona fide programs approved by the United States department of labor, determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(6) "Labor" ~~is hereby defined to be~~ means all services in excess of $25,000 performed in construction, maintenance, or remodeling work in ~~all~~ a state, county, municipal, and school ~~work~~ district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work.

(7) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, and travel ~~allowance provisions~~, and other bona fide programs approved by the United States department of labor, ~~which~~ that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a

contract under this part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, and travel ~~allowance provisions~~, and other bona fide programs approved by the United States department of labor, ~~shall~~ must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(8) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 3. Section 18-2-403, MCA, is amended to read:

"**18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception.** (1) In any contract let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under any law of this state, there ~~shall~~ must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy and highway construction, must contain a provision requiring the contractor to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, and travel ~~allowance provisions~~, and other bona fide programs approved by the United States department of labor, in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for ~~such~~ the project.

(4) A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

(5) ~~No~~ A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions of subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary

to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from ~~his~~ the contractor's obligation to pay the standard prevailing wage rate and places ~~such~~ the obligation on the public contracting agency."

Section 4. Section 18-2-407, MCA, is amended to read:

"18-2-407. Forfeiture for failure to pay standard prevailing ~~wages~~ wage. (1) Any contractor, subcontractor, or employer who ~~shall--pay~~ pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the ~~contracting agency the sum of $25 a day for each worker underpaid~~ department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the unemployment insurance administration account, as provided in 39-51-406, and must be used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it ~~shall appear~~ appears to the contracting agency or to the Montana commissioner of labor that there ~~are~~ is insufficient ~~moneys~~ money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. ~~Nothing in this~~ This part ~~shall~~ does not prevent the individual worker who has been underpaid, the worker's representative, or the commissioner of labor on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2."

Section 5. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."

Section 6. Section 18-2-423, MCA, is amended to read:

"18-2-423. Submission of payroll records. ~~If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project~~ A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis and shall submit certified payroll records to the contracting agency on a weekly basis. For contracts let by a state agency, a contractor and a subcontractor shall develop and maintain certified weekly payroll records and shall provide the records to the department within 5 days if requested. Records filed with the department become

public documents."

Section 7. Section 18-2-424, MCA, is amended to read:

"18-2-424. Enforcement. If a contractor or a subcontractor refuses or fails to submit certified payroll records ~~requested by~~ to the department or to the contracting agency pursuant to 18-2-423, the commissioner or ~~his~~ an authorized representative may issue subpoenas compelling the production of those records."

Section 8. Section 18-2-432, MCA, is amended to read:

"18-2-432. Penalty for violation. (1) If any a person, firm, or corporation ~~shall fail~~ fails to comply with the provisions of this part, the state, county, ~~municipal~~ municipality, or school ~~officers who have~~ district, or officer of a political subdivision that executed the contract shall retain ~~$1,000~~ 3% of the contract price as liquidated damages for the violation of the terms of the contract and ~~said~~ the money ~~shall~~ must be credited to the proper funds of the state, county, ~~municipal~~ municipality, or school ~~districts~~ district, or political subdivision.

(2) Any A person, firm, or corporation violating the provisions of this part on two or more projects within a 3-year period ~~shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court~~ may not perform work on a

publicly funded project covered under this part for 3 years.

(3) Whenever any an action shall--have has been instituted in any a district court in this state against any person, firm, or corporation for the violation of this part, the court in which said the action is pending shall-be-and it is hereby authorized to issue an injunction to restrain any--such the person, firm, or corporation from proceeding with his-or-its a contract with the state, county, municipal municipality, or school districts district, or political subdivision, pending the final determination of said the instituted action so-instituted."

NEW SECTION. **Section 9.** Prevailing wage rate proceeding. Payment of standard prevailing wage rates must be enforced pursuant to 18-2-407, and all proceedings must be brought before a department hearing officer. The decision of the hearing officer may be appealed by filing a petition in district court.

NEW SECTION. **Section 10.** Repealer. Section 18-2-405, MCA, is repealed.

NEW SECTION. **Section 11.** Codification instruction. [Sections 1 and 9] are intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [sections 1 and 9].

NEW SECTION. **Section 12.** Applicability. [This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993.

NEW SECTION. **Section 13.** Effective date. [This act] is effective on passage and approval.

-End-

LC 1447/01

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0342, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act revising the Little Davis-Bacon Act to provide penalties for wage violations on public contracts; revising procedures for wage claims and providing for proceedings on payment of prevailing wage rates before a Department of Labor and Industry hearing officer.

ASSUMPTIONS:

1. Section 9 of the proposed legislation requires that all proceedings on payment of prevailing wage must be brought before a Department of Labor & Industry (DOL) hearing officer. An employee will be allowed to directly file proceedings with the hearings unit. No investigation or determination will be made by the wage and hour unit of the DOL, pursuant to Title 39, Chapter 3, part 2.
2. One entry level Hearings Officer III grade 16,will be required to conduct the (proceedings) additional administrative contested cases without the benefit of an investigation or determination that is required under current law.
3. One entry level Legal Secretary grade 9, will be needed to support the additional staff requirements.
4. One time start up costs for the positions include office equipment and a PC.

FISCAL IMPACT:	FY '94			FY '95		
Expenditures:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	0	2.00	2.00	0	2.00	2.00
Personal Services	0	57,012	57,012	0	57,961	57,961
Operating Expenses	0	22,452	22,452	0	18,776	18,776
Equipment	0	9,000	9,000	0	0	0
Total	0	88,464	88,464	0	76,737	76,737
Funding:						
UI Admin Tax	0	88,464	88,464	0	76,737	76,737

Net Impact: UI Adm Tax expenditures will increase by $88,464 (FY94) and $76,737 (FY95).

(Continued)

Dave Lewis 2-13-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Bill Wilson 2/18/93
WILLIAM F. WILSON, PRIMARY SPONSOR DATE

TECHNICAL NOTES:

There appears to be a conflict between Section 9 which requires all proceedings must be brought before a department hearings officer, and Section 4 (Pg 8, Ln 9 to 14) which allows an individual worker, a worker's representative or the commissioner of labor to maintain an action for recovery of wages due under the contract as provided in Title 39, chapter 3, part 2.

Title 39, chapter 3, part 2 requires the department to investigate a wage claim and to make a determination. A person can then appeal the department's determination to a hearings officer. Section 9 requires all proceedings be brought before a department hearings officer even though the department has not investigated or issued a determination.

Section 4 requires an employer to forfeit the amount of wages owed plus $25 a day for each day that the employee was underpaid. Section 39-3-206, MCA, requires the employer to pay a penalty of an amount not to exceed 100% of the wages due and unpaid, plus interest. One may interpret that an employee can collect both amounts.

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

Committee ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chair Tom Towe, on February 18, 1993, at 1:00 PM.

ROLL CALL

Members Present:
Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Kelsey Chapman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 329, SB 342, SB 394
Executive Action: None

HEARING ON SB 329

Opening Statement by Sponsor:

Senator Klampe, Senate District 31, opened on Senate Bill 329. He told the Committee SB 329 was a bill that would allow Missoula to build an ice skating rink. Senator Klampe stated that during the Hearing the members and witnesses would be talking about Tax Exempt Revenue Bonds, non-profit corporations, and prevailing wage. He stated the intent is to exclude non-profit groups and corporations from the prevailing wage requirement. He clarified that this exclusion did not include hospitals. Senator Klampe told the Committee there were two other purposes of SB 329. He explained that these were to clarify the statutes. The first of these purposes was to clarify that what the bill addressed with the prevailing wage provision was only the portion of a project

Senator Lynch asked Gene Fenderson if it were common for union workers to work for less than prevailing wage. Mr. Fenderson answered that he was not aware of such a practice.

Senator Lynch asked Senator Klampe if the contractors they had been discussing were non-union. Senator Klampe directed the question to Greg Rutherford. Mr. Rutherford answered that the situation of a union contractor working for less than the prevailing wage might come about if there were a special contract involved, but a non-union contractor would be the most likely contractor to work on these projects.

Senator Towe asked Greg Rutherford why a contractor could not make an agreement to donate part of his or her work time and be paid the prevailing wage for the other part of the work time. Mr. Rutherford said he was not sure what the laws were that governed that type of agreement. Senator Towe said that a person can volunteer at any time, but that if a person wants to get paid that person should get the prevailing wage.

Senator Towe asked Mae Nan Ellingson if the Committee was to conclude not to release the non-profit corporations from the prevailing wage, would there still be parts of Senate Bill 329 that should be passed. Ms. Ellingson answered that the Committee should clarify what the Bill applies to, put the law where it could be found, and make the Bill applicable to bonds issued after July 1, 1993.

Closing by Sponsor:

Senator Klampe closed. He reviewed the three points of Senate Bill 329: To get the ice skating rink built in Missoula; to amend the bond laws so that a project can accept tax exempt revenue bonds but not apply the bond rules to the portion of the project not covered by the bonds; and to get the Committee to clarify the applications of the Bill, put the law where it is available, and to make the Bill applicable to bonds issued after July 1, 1993.

HEARING ON SB 342

Opening Statement by Sponsor:

Senator Wilson, Senate District 19, opened on Senate Bill 342. He told the Committee the Bill was being introduced at the request of a group of laborers' organizations in an attempt to find a compromise with SB 62. SB 342 would allow employers or contractors to continue their pension and insurance programs for their employees. Senator Wilson explained the current law does not technically allow this. SB 342 would bring the employers and contractors in line with federal law. This was the intent of SB 62. In addition to this intent, SB 342 would penalize the contractors and subcontractors failing to pay standard prevailing

wage. An employer who violates Davis-Bacon prevailing wage rates for public works contracts would be fined up to 20% of the delinquent wages. This money would be paid to the Department of Labor Unemployment Administration Division and used for future enforcement of the laws. The convicted employer would pay the worker his wages and $25 per day each day the worker was shorted. Senate Bill 342 requires that a contractor submit certified payroll records to the contracting agency on a weekly basis. These records would be provided to the Department of Labor within five days after a request. They would then become public record. Senator Wilson brought attention to amendments in the Bill. The amendments deal with the contractor or subcontractor that violates any of the provisions on two or more projects during a three year period. If found guilty, the contractor or subcontractor would loose the right to work on publicly funded projects for three years.

Proponents' Testimony:

Gene Fenderson, Laborers' International Union, announced his organization stood in strong support for SB 342. Mr. Fenderson made reference to SB 62, introduced by Senator Hager. He told the Committee SB 342 and SB 62 both address the problems in Montana with a law saying, unless a person is signatory to a collective bargaining agreement, that person may not have insurance, welfare or pensions provided by the employer. This law was struck down by the courts. The Contractor's Association continues to run its programs for its members and workers. Mr. Fenderson announced the Laborers' Union did not have an argument with that. SB 342 has provisions within it allowing for employers to continue health, welfare, and pension programs for employees not signatory to a collective bargaining contract. Mr. Fenderson told the Committee a similar bill was passed in the 52nd Legislature, but vetoed by Governor Stephens. SB 342 does not have all of the provisions the bill of the 52nd Legislature did. Mr. Fenderson told the Committee the following points were missing from SB 342: The Union had incorporated continuing welfare and pension programs into the 52nd Legislature Bill; it included in the Bill stricter fines to be imposed on people who broke the laws within the system; it had provisions to determine how to set prevailing wage. Mr. Fenderson explained that SB 342 has four facets: Non-union contractors could continue welfare and pension programs for their employees; it has stricter penalties for contractors not abiding by the laws; it has certified payrolls; and it has provisions that if a contractor was caught not abiding by the laws, that contractor could not work on publicly funded projects for three years.

Bill Egan, Montana Conference of Electrical Workers, told the Committee employees should have the same benefits and rights whether they be union or non-union. In this fact, Mr. Egan agreed with SB 62. He said he hoped the sponsors of SB 62 would agree to the compromise of SB 342. SB 342 would add fines for employers cheating the system. Mr. Egan said an employer that is

honest would like to see the added provisions because that employer would not like to compete with another who was getting away with cheating the system for a profit. Mr. Egan announced he felt SB 342 was a good compromise to all the other similar bills that have come before the Montana Legislature. He urged a "Do Pass."

John Manzer, Teamsters Union, told the Committee that his organization thought SB 342 was a fair compromise bill. He said that he questioned SB 62 because it may cause problems when strictly interpreted. Mr. Manzer told the Committee that when an employer runs the employer's own employee program, and polices it, as well, there should be legislation to protect the employees. He claimed that workers should be given as much protection in the areas of welfare and pension as they can be given under state law or statute. He urged passage of SB 342.

Ron James, Ironworkers' Union, rose to support SB 342.

Mike Mizenko, Montana State Association of Plumbers and Pipefitters, urged support of SB 342.

Don Judge, Executive Director, Montana State AFL-CIO, told the Committee that he was disappointed the Contractor's Association had come to testify as opponents to SB 342 because the Bill was meant to be a compromise. Mr. Judge added that SB 62 was not a good bill because it would allow for undesirable health and welfare programs to be set up under its provisions. Representatives of the AFL-CIO, the Contractor's Association, the State Department of Labor, and the building trades met and attempted to compromise on SB 62. Mr. Judge reported that in that meeting, organized labor felt that certain language must be included in SB 342 (Page 1, Line 25; Page 2, Lines 1 and 2) in order to protect currently existing apprenticeship programs in the state. Mr. Judge told the Committee the next topic discussed in the meeting was adding a provision in SB 342 to allow the Department of Labor to preview the fringe benefit programs (Page 2, Lines 17-19). This provision states that a private contractor or sub-contractor must file a copy of the fringe benefit plan or program that is described in Section 2 of SB 342. Mr. Judge also said the Bill would strengthen penalty provisions for failure to pay benefits. SB 342 also would provide that the employer would be required to keep in his/her files and submit the certified weekly payroll upon request of the State Department of Labor and Industry. He added that if a person or corporation violated these provisions, that individual or corporation would be prohibited from performing work on a publicly funded project covered under the Bill for a period of three years. Mr. Judge told the Committee the next section the compromise meeting addressed the enforcement of proceedings and decided the cases could be brought before a Department of Labor and Industry hearings officer, and the decision could be appealed to the District Court. He announced that SB 342 does not change prevailing rates, prevailing rate districts, or add new

bureaucracy in the State of Montana. Mr. Judge urged putting the Bill into law so that the fringe benefit plans and the certified weekly payroll could be public record. He told the Committee that this would help stop violations of labor laws and workers' compensation.

Opponents' Testimony:

Lloyd Lockrem, Montana Contractors Association (MCA) stated SB 342 is essentially HB 836 with one exception: Title and predetermined wages. Mr. Lockrem told the Committee the MCA supports the certified payroll. The opposition of the Contractors Association to SB 342 is that the association feels it ties two unrelated issues together. SB 62 simply grants construction workers who do not belong to unions in the State of Montana some comfort that their benefits will continue. Mr. Lockrem stated that the opposition to SB 342 is because the issues of continuing benefits and certified payroll are unrelated. Mr. Lockrem announced the MCA would support the concept of SB 342 and offered the Committee a set of proposed amendments (Exhibit #3). He also gave the members a copy of apprenticeship training laws (Exhibit #4). He pointed out the highlighted section of the paper. Mr. Lockrem told the Committee that the MCA had no objections to the penalty provision. He added, however, that the penalty may be severe enough a contractor would chose to litigate in order to save money. He stated he felt the contractor that cheats should be issued a civil penalty of up to $5 thousand.

Brad Talcott, Montana Contractor Health Care Trust, stated he was at the compromise meeting referred to by Mr. Judge. He told the Committee his feeling was there needed to be language added in order to make enforcement of the laws easier for the Department of Labor by keeping the paper load out of that office. Mr. Talcott stated the Department would be more willing to agree with the provisions in SB 342. Mr. Talcott said that he agreed with Mr. Egan that there should be equity for all workers. He told the Committee that he felt the AFL-CIO was looking at SB 342 as if it were a contract of some form, as Mr. Judge referred to it as one. Mr. Talcott stated that he felt the Bill was only legislation to get health care, welfare, and pension benefits for workers that had not had them before.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Blaylock asked Lloyd Lockrem about workers put in health care plans that were not good. Mr. Lockrem could not give an answer to the question directly, but explained the bad plans existed, but that the MCA and ERISA tried to counter them by offering better plans that were also competitive with the bad

ones.

Senator Towe asked Mr. Lockrem if he and the MCA found anything offensive in SB 342. Mr. Lockrem answered other than the problem of the Bill mixing health care issues with the certified payroll issues, he found nothing offensive.

Senator Towe asked Mr. Lockrem why he did not want the two issues together. Mr. Lockrem answered the MCA felt health care and retirement issues were to critical. He felt that the payroll issues may overcome these issues.

Senator Towe asked Don Judge why the payroll and pension issues should be run together if they are two good issues that stand on their own. Mr. Judge answered the AFL-CIO did not feel the certified payroll issue was a very controversial one, and backed up his response by pointing out to the Committee that there had been no one to testify against it at the hearing.

Senator Towe asked Don Judge what caused the Bill to be vetoed by Governor Stephens in the 52nd Legislature. Mr. Judge answered that he did not know. Mr. Judge directed the question to Gene Fenderson. Mr. Fenderson told the Committee two of the reasons the bill had been vetoed. The first was a clause that changed the way the rates of prevailing rates were set. Mr. Fenderson added the other item that the Governor did not like about the bill was the Department of Labor and Industry and the Architects and Engineers went to him and testified that there was too much paperwork involved. He added SB 342 did not carry either of these provisions. Mr. Fenderson mentioned too, that he felt this bill was not "piggy-backing" payroll issues and pension issues.

Senator Keating asked Mr. Fenderson if the department would be as nervous about SB 342 as it was about the bill that was vetoed by Governor Stephens because it still contained the weekly certified payroll provisions. Mr. Fenderson answered the payroll provisions had changed. He stated the original problem the department had with the Bill was the paper load it would have because all weekly certified payrolls would be sent to be filed with the department. SB 342 had provisions the payroll records would be kept by the contractor or the sub-contractor and produced to the department upon request.

Mr. Keating asked Mr. Fenderson if the contractor or sub-contractor would then have to copy all the payroll records if the Department of Labor requested them. Mr. Fenderson answered if there was a complaint, the Department of Labor would handle the copying of the files.

Mr. Keating asked Mr. Fenderson under what conditions the Department of Labor would request the payroll records of a contractor or a sub-contractor. Mr. Fenderson answered a request would be made if a worker had filed a complaint with the Department that there was a discrepancy in the payroll or in

carrying out the contract.

Senator Aklestad asked Mr. Fenderson who else besides the Department of Labor could request a copy of the payroll records. Mr. Fenderson answered anyone who wants one could get one. The records would become public.

Senator Aklestad asked Lloyd Lockrem if he was attempting to take out any of the severe penalties through proposing his amendments. Mr. Lockrem answered he was not, but rather softening them to avoid forcing a contractor into court.

Senator Aklestad asked Mr. Lockrem if he would support the legislation with the amendments. Mr. Lockrem answered that he would.

Senator Aklestad asked Mr. Lockrem if he would support the legislation without the amendments. Mr. Lockrem answered he would not. He told the Committee the MCA would prefer to support SB 62 as a separate bill.

Senator Towe asked Mr. Lockrem, referring to Mr. Lockrem's proposed amendments (Exhibit #1) what was wrong with the Montana Department of Labor only recognizing those employees that get federal registration from the United States Department of Labor. Mr. Lockrem answered there was no approval.

Senator Towe asked Mr. Lockrem if it would be better to change the word "approval" to "registration" within the section of the Bill that would be amended by items 2 through 5 in Mr. Lockrem's amendments (Exhibit #1). Mr. Lockrem answered there was no registration by the U.S. Department of Labor. He added what was in SB 62 met the requirements of ERISA. There is no Federal approval process under ERISA law. Mr. Lockrem added that this section in SB 342 may be preempted by ERISA.

Senator Towe asked Mr. Fenderson if he agreed with Mr. Lockrem. Mr. Fenderson answered that he disagreed with Mr. Lockrem's statement that approval was hard to regulate because there is no Federal approval process under ERISA law.

Senator Towe asked Mr. Fenderson what was intended by sub-paragraph 4 of SB 342. Mr. Fenderson answered it provides that the contractor or sub-contractor must pay the total fringe benefit.

Senator Towe asked Mr. Fenderson if he meant to countermand Section 1 of SB 342 if the contractor does not have a collective bargaining agreement. Mr. Fenderson answered he did not. Senator Towe said it looked like it might.

Senator Towe asked Mr. Lockrem to answer the same question. Mr. Lockrem told the Committee that the union members have no option

on whether they were going to pay health and welfare, or apprenticeship training programs, but rather pay for the whole package. The plan of MCA is to have an option between the two.

Senator Lynch asked Mr. Lockrem if SB 62 were to be tabled what his stance on SB 342 would be. Mr. Lockrem answered it would have to go back to the Board of Directors.

Closing by Sponsor:

Senator Wilson closed. He stated that the issues in SB 342 called for compromise. He then pointed out that the contractors received everything in SB 342 that they would in SB 62. He said what labor is asking for is stricter enforcement of prevailing wage laws. Senator Wilson told the Committee the request was not unreasonable, and urged a Do Pass of SB 342.

HEARING ON SB 394

Opening Statement by Sponsor:

Senator John Harp, Senate District 4, opened. He told the Committee he had introduced this Bill several times before in different Committees. Senator Harp explained much of the language in SB 394 is included in Department of Labor and Industry Rules. Currently under rules, 20% of a worker's settlement if there is no hearing on a workers' compensation case goes to the attorney. 25% goes to the attorney if there is a hearing before a workers' compensation judge, or the Supreme Court. SB 394 delegates 15% of the settlement for the attorney in all cases. Senator Harp stated very few workers' compensation cases go before a workers' compensation judge, and even fewer go before the Montana Supreme Court. SB 394 also puts a cap on attorney's fees for workers' compensation cases. The Bill sets the attorney fee limit at $7500.00. Senator Harp told the Committee if the insurer and the claimant have agreed on a certain sum then that sum should not be affected by an attorney's efforts. If an attorney comes to the workers' compensation arena and finds by the attorney's own efforts additional benefits may be obtained, then the attorney may be paid 15% of the settlement. Senator Harp went on to say an attorney may collect up to 15% of a settlement a claimant to whom initial compensation is denied receives if the claim is accepted by the insurer, or ordered compensable by workers' compensation court or the Supreme Court. He told the Committee SB 394 listed items for which he thought attorney's fees should not be included. He continued, saying he did not think medical and hospital benefits that are received by a claimant unless the insurer has denied all claims and benefits that are denied for certain medical and hospital costs should be included in attorney's fees unless the attorney is successful in obtaining the benefits of the claims. He also stated an attorney should not receive benefits in a case which the attorney aided

ROLL CALL

SENATE COMMITTEE Labor : Employment Relations DATE 1/18/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Towe	X		
Sen. Wilson	X		
Sen. Aklestad	X		
Sen. Blaylock	X		
Sen. Keating	X		
Senator Lynch	X		
Sen. Burnett	X		

FC8

Attach to each day's minutes

Montana Contractors Association
Lloyd Lochram

Amendments to SB 342

1. Page 1 Strike Line 15 through Page 3 Line 3.
(All of Section 1)

2. Page 4 strike all of line 3 through "labor," on line 4.
Insert: "allowance provisions,"

3. Page 4 strike all of line 21 through "labor," on line 22.
Insert: "allowance provisions,"

4. Page 5 line 8 following: "travel"
Strike the remainder of the line through "labor," on line 10.
Insert: "allowance provisions,"

5.. Page 6 strike all of line 6 through "labor," on line 7.
Insert: "allowance provisions,"

6. Page 8 line 10 following: "underpaid".
Strike the remainder of the line through "representative," on line 11.

7. Page 11 strike lines 18 and 19.
(section 10)

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 2/18/93
BILL NO. SB 342

Michigan's Apprenticeship Training Laws Subject to ERISA Preemption

ERISA preempts Michigan's apprenticeship training program, the Eastern District Court of Michigan rules.

Amendments enacted

Plaintiffs brought an action to enjoin the enforcement of new apprentice ratio and training program requirements added as amendments to Michigan's apprenticeship law. The plaintiffs argued that these requirements impermissibly interfered with their established apprenticeship training requirements and were consequently preempted by ERISA and the National Labor Relations Act.

Law would affect employee benefit plans

The court notes that ERISA will preempt any state law which relates to any employee benefit plan. The court finds further that a recent Eighth Circuit case held that a law similar to the Michigan statute was preempted since it was "specifically designed to affect employee benefit plans" and would subject employers to conflicting and inconsistent state and local regulations.

Savings clause not applicable

The defendants argued that, even if the ratio and equivalency requirements were found to relate to the apprenticeship programs, the Michigan law is saved from preemption by ERISA's "savings clause." Under this provision, ERISA may not "alter, amend, modify, invalidate or impair" any law of the United States. The defendants contended that the preemption of the Michigan statute would interfere with apprenticeship training regulations issued under the Fitzgerald Act, a federal law.

The court disagrees. It finds that the purpose of the Fitzgerald Act is to create a voluntary system under which employers can obtain federal registration by observing and complying with certain apprenticeship standards. It does not require employers to seek or get approval for their apprenticeship training programs. In addition, employers that do not choose to follow the standards necessary for federal registration do not violate federal law.

Accordingly, the court finds that the preemption of the ratio and equivalency requirements will not "alter, amend, modify, invalidate or impair" any law of the United States, since enjoining the enforcement of the Michigan law will not cause employers that obtained federal registration before the recent amendments to stop adhering to the relevant voluntary standards.

Federal regulation appropriate

The court also rejects the defendants' argument that the ratio and equivalency requirements should not be preempted because they concern two subjects—occupational training and safety requirements—traditionally reserved to state regulation. The court agrees that the regulation of these two areas is normally reserved to the states. However, "Congress has the authority to enact laws that impact upon matters traditionally of local concern where those local matters affect interstate commerce." Further, the court holds, Congress has made clear in ERISA an intent to preempt all state laws relating to an employee benefit plan.

The case is *Associated Builders and Contractors v. Perry*, 15 EBC 2919 (E.D. Mich. 1992).

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 2/18/93
BILL NO. SB 342

LLR *Employee Benefits* Legal-Legislative Reporter News Bulletin

For members of the International Foundation of Employee Benefit Plans

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DATE 2-18-93

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 329 - SB 342 - SB 394

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Ron James	Iron Workers Lo 841	342	✓	
Charles R Brooks	MT. Ref. Assoc	394	✓	
Greg Rutherford	Missoula On Ice Inc.	329	✓	
Sonny Lucken	Mont - Cont. Trust	342		✓
Carl Schweitzer	MCA	342		—
Bradley B Talcott	Mont Contractor Trust	342		✓
John Lawton	City of Great Falls	329	✓	
[illegible]	MT Conf Elect Wkrs	329	—	Am
[illegible]	" " "	342	—	
John Manzer	Teamsters Union	342	✓	
~~[illegible]~~	~~[illegible]~~	~~[illegible]~~	~~[illegible]~~	~~[illegible]~~
Michael Mizenko	MT. State Asso Plumbers	329	✓	
MICHAEL MIZENKO	MT. STATE ASSO. Plumbers	342	✓	
[illegible]	Labor Union	329 342	✓	?
[illegible]	Mooney & Whitney	329		
Riley Johnson	NFIB	394	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2/18/93

SENATE COMMITTEE ON LABOR

BILLS BEING HEARD TODAY: SB 329 SB 342 SB 394

Name	Representing	Bill No.	Check One Support	Oppose
Don Judge	MT STATE AFL-CIO	SB 342	✓	
Mike Micone	MMCA	SB 394	✓	
Roger B Hill	Mt Trial Lawyers	SB 394		✓
Rick Hill	Gov Office	SB 394	✓	
Don Judge	MT STATE AFL-CIO	SB 394		✓
Kent Kleinkopf	self	SB 394		X
Jacqueline Lenmark	AIA	SB 394	✓	
Gene Phillips	NAII	SB 394	✓	
Dan Whyte	Arco	SB 329	✓ amend.	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Towe, on February 20, 1993, at 1:30 PM

ROLL CALL

Members Present:
Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Kelsey Chapman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 377, SB 381, SB 360, SB 405
Executive Action:	SB 347, SB 342, SB 62, SB 394, SB 329, SB 274, SB 377, SB 381, SB 360, SB 405

HEARING ON SB 377

Opening Statement by Sponsor:

Senator Sue Bartlett, Senate District 23, told the Committee SB 377 would require employers to provide a ten minute rest periods to employees for every four working hours. Senator Bartlett explained the Bill was drafted in response to a request of people in Senate District 23. These people work for an employer who had provided for rest periods during the company's history in Montana. The company was purchased by a national corporation, and the new owners prohibit rest periods because Montana law does not require it. Each time the employees requested breaks, they were told they would not have them until rest periods were required by state law. Senator Bartlett told the Committee among Western states Colorado, Utah, Nevada, Oregon, Washington, and

was already in the Bill that dealt with the same situation. He said there would be other places to amend SB 347. Senator Aklestad urged the Committee to pass the Bill out of Committee with the amendments already accepted, but not any more.

Vote:

The motion FAILED with Senator Keating voting YES. Senator Lynch voted YES on a proxy vote. Senator Towe, Senator Blaylock, Senator Aklestad, Senator Burnett, and Senator Wilson voted NO.

Motion\Vote:

Senator Aklestad moved SB 347 DO PASS AS AMENDED. The motion carried UNANIMOUSLY.

EXECUTIVE ACTION ON SB 342

Motion\Vote:

Senator Towe moved amendments (SB034201.AEM) be adopted. The Motion to adopt amendments (SB034201.AEM) CARRIED UNANIMOUSLY. Senator Lynch voted YES by proxy.

Discussion:

Senator Keating asked how the amendments adopted would help a private contractor. Senator Towe answered they would clarify that a contractor could not get fringe benefits so high they were above the prevailing wage.

Senator Keating asked if these fringe benefits could be paid into a trust. Senator Towe answered if SB 342 was passed, the contractor could put the benefits into a trust.

Motion\Vote:

Senator Blaylock moved SB 342 DO PASS AS AMENDED. The Motion carried with Senator Towe, Senator Blaylock, Senator Wilson, Senator Aklestad, and Senator Keating voting YES. Senator Lynch voted YES by proxy vote. Senator Burnett voted NO.

EXECUTIVE ACTION ON SB 62

Motion/Vote:

Senator Wilson moved SB 62 be TABLED. The Motion CARRIED, with Senator Towe, Senator Blaylock, and Senator Wilson voting YES. Senator Lynch voted YES on a proxy vote. Senator Burnett, Senator Keating, and Senator Aklestad voted NO.

ROLL CALL

SENATE COMMITTEE Labor & Employment Relations DATE 1/20/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Towe	X		
Sen. Wilson	X		
Sen. Aklestad	X		
Sen. Blaylock	X		
Sen. Keating	X		
Sen. Lynch	X		
Sen. Burnett	X		

F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

February 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 342 (first reading copy -- white), respectfully report that Senate Bill No. 342 be amended as follows and as so amended do pass.

Signed: Thomas E. Towe
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Page 2, line 24 through page 3, line 3.
Following: "labor." on line 24
Insert: "(5)"

2. Page 2, line 25
Following: "subcontractor"
Strike: remainder of line 25 through "agreement" on page 3 line 1
Insert: ", except those described in subsection (4),"

3. Page 3, line 2
Following: "hourly"
Strike: remainder of line 2 through "18-2-402" on line 3
Insert: "wage as defined in 18-2-401"

4. Page 3, line 19.
Following: line 18
Insert: "(2) Basic hourly wage" means that portion of the standard prevailing wage that is taxable."
Renumber: subsequent subsections

-END-

Amd. Coord.
Sec. of Senate

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 342

DATE 20 February 1993 TIME 5:03 A.M. (P.M.)

NAME	YES	NO
Sen. Tom Towe	X	
Sen. Bill Wilson	X	
Sen. Jim Burnett		X
Sen. J.D. Lynch	X	
Sen. Chet Blaylock	X	
Sen. Tom Keating	X	
Sen. Gary Hklestad	X	

Kelsey Chapman
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Blaylock that SB 342 do Pass as amended

Amendments to Senate Bill No. 342
First Reading Copy

Requested by Senator Towe
For the Seante Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 20, 1993

1. Page 2, line 24 through page 3, line 3.
Following: "labor." on line 24
Insert: "(5)"
Following: "subcontractor" on line 25
Strike: remainder of line 25 through "agreement" on page 3 line 1
Insert: ", except those described in subsection (4),"
Following: "hourly" on page 3, line 2
Strike: remainder of line 2 through "18-2-402" on line 3
Insert: "wage as defined in 18-2-401"

2. Page 3, line 19.
Following: line 18
Insert: "Basic hourly wage" means that portion of the standard prevailing wage that is [redacted] taxable."
Renumber: subsequent subsections

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Nelson, on March 9, 1993, at 3:05 p.m.

ROLL CALL

Members Present:
Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)

Members Excused: Rep. Whalen & Rep. Tuss

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 223, SB 329, SB 342 & SB 381
Executive Action: None

HEARING ON SB 223

Opening Statement by Sponsor:

REP. SUE BARTLETT, SD 23, Lewis and Clark County, sponsor, opened on SB 223 by stating that this bill was developed to revise child labor laws. This bill was developed to do three things. These three things are to conform to Montana statutes, to define hazardous jobs for those under 18, and to estimate the maximum hours per day a 14 and 15 year old can work. This bill prohibits work during school hours, unless it is an apprenticeship program.

secretary who drives to the mailbox to get the mail?

SEN. FORRESTER stated that if the secretary's employer tells the whole truth when being rated, there should not be a problem.

REP. HANSON stated that he disagrees because the rating is based on the greatest risk performed, even if it is only performed once per day.

Closing by Sponsor:

SEN. FORRESTER closed on SB 381 by stating that this bill will help keep employers honest.

HEARING ON SB 342

Opening Statement by Sponsor:

SEN. BILL WILSON, SD 19, Great Falls, sponsor, stated that SB 342 covers four major changes. The changes include allowing contractors to pay fringe benefits in cash, increasing benefits to employees who are shorted and if there are two or more violations they are suspended for three years.

Proponents' Testimony:

John Andrew, Department of Labor, proposed an amendment to the committee. He referred to page 8, line 18 through 23 and stated that this is a contradiction.

Eugene Fenderson, Montana District Council of Laborers, stated that this bill goes back a number of years. He stated that non-union contractors have paid into insurance or pension funds, but now are not allowed to continue. If an employer cheats ten times and is only caught once, this is not fair. He stated that at least there should be a 20 percent charge plus court costs. He referred to page 10 and the certified payroll on a weekly basis. Employers keep certified payroll on state employers. The passage of this bill will make the system work better and do away with the large fiscal note.

Bill Egan, Conference of Electrical Workers, stated that this bill is more than a fair compromise. This bill allows non-union employers and employees to pay into funds for their future. He stated that his organization supports SB 342 and its proposed amendments.

Lars Erickson, State Council of Carpenters, stated that this bill will protect honest employers union or not.

Darrell Holzer, Montana State AFL-CIO, stated that this bill passed the senate with a vote of 41 to 7. He stated that his organization is in support of SB 342.

Opponents' Testimony:

Lloyd Lockram, Health Care Trust, referred to page 14 of the bill. His organization supports the passage of SB 342.

Carl Schweitzer, Montana Contractors Association, stated that his organization is opposed to SB 342 because there could be a problem with monitoring the certified payrolls. He asked the committee to consider sending SB 342 to a sub-committee.

Mike Micone, Department of Labor, (EXHIBIT #7).

Questions From Committee Members and Responses:

REP. PAVLOVICH asked if the amendment was brought up in the Senate?

REP. WILSON stated no.

Closing by Sponsor:

SEN. WILSON closed on SB 342 by stating that everyone wins.

CHAIRMAN NELSON appointed **REP. HANSON, REP. MILLS, AND REP. DRISCOLL** to a subcommittee on SB 342.

HEARING ON SB 329

Opening Statement by Sponsor:

SEN. TERRY KLAMPE, SD 31, Missoula, sponsor, opened on SB 329 by stating the three different concepts of the bill. The three concepts are tax exempt bonds, prevailing wage and nonprofit organizations. The purpose of the bill is to revise prevailing wage on projects financed from bond proceeds after 6/30/93. **SEN. KLAMPE** stated that this bill is a reasonable request with a very narrow focus. He referred to 501(c)(3) organizations of Internal Revenue Code Annotated. He stated that SB 329 will clear up any confusion about paying prevailing wage.

Proponents' Testimony:

Mae Nan Ellington, Dorsey and Whitney, stated that SB 329 will clarify the kind of bonds prevailing wage applies to. She provided the committee with written testimony. **EXHIBIT #8**

Bill Egan, Montana Confederation of Electrical Workers, stated that 501(c)(3) is very broad designation and has lots of room for mischief. He stated that his organization supports SB 329 without the proposed amendments.

Eugene Fenderson, District Council, stated that the language in the bill needs to be straightened out. He stated that his

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL DATE 3/9/93

NAME	PRESENT	ABSENT	EXCUSED
REP. TOM NELSON, CHAIRMAN	✓		
REP. GARY FELAND, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. JERRY DRISCOLL	✓		
REP. ALVIN ELLIS	✓		
REP. PAT GALVIN	✓		
REP. SONNY HANSON	✓		
REP. NORM MILLS	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL TASH	✓		
REP. ROLPH TUNBY	✓		
REP. CARLEY TUSS			✓
REP. TIM WHALEN			✓

EXHIBIT 1
LABOR 3/9/91

AO 450 (Rev. 5/85) Judgment in a Civil Case

FILED, ENTERED AND NOTED
IN CIVIL DOCKET
FEB 25 1991
LOU ALEKSICH, JR., CLERK
By Deputy

EXHIBIT
DATE 3/9/9
HB SB 34
#7

United States District Court

DISTRICT OF MONTANA - Billings Division

UNITED INDUSTRY, INC. and its subsidiaries, and SILLIAM LEE WIX,
Plaintiffs,

vs

THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY and its Commissioner MIKE MICONE,
Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: CV 89-67-BLG-JFB

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☑ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT IS GRANTED, AND THAT DEFENDANT'S AND DEFENDANT-INTERVENORS' MOTIONS FOR SUMMARY JUDGMENT ARE DENIED.

FEBRUARY 25, 1991
Date

LOU ALEKSICH, JR.
Clerk

(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

UNITED INDUSTRY, INC. and its subsidiaries, and WILLIAM LEE WIX,	)	CV 89-67-BLG-JFB
Plaintiffs,	)	
THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY and its Commissioner MIKE MICONE,	)	
Defendants.	)	MEMORANDUM OPINION AND ORDER

Presently pending before this Court are cross Motions for Summary Judgment in this declaratory judgment action. For the reasons set forth below, plaintiffs' Motion is granted, defendants' Motion is denied, and defendant-intervenors' Motion is also denied.

Facts and Procedural Background

Plaintiffs filed this action seeking a declaratory ruling, pursuant to 28 U.S.C. §2201 and Rule 57, Fed.R.Civ.P., that a provision of Montana's prevailing wage statute for public construction projects is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. ("ERISA"). Montana's Little Davis Bacon Act, otherwise known as the Montana Prevailing Wage Act, provides in part that:

> [a]ll public works contracts . . . must contain a provision requiring the contractor to pay the standard prevailing rate of wages, including fringe benefits for health and

> welfare and pension contributions and travel allowance provisions, in effect and applicable to the district in which the work is being performed.

Mont. Code Ann. §18-2-403(2). Another provision of this Act directs that "[w]henever the employer is not [a] signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages." Mont. Code Ann. §18-2-405 ("Section 405" or "§405").

Plaintiff United Industries and some of its subsidiaries are not signatories to collective bargaining agreements, but they do participate in ERISA-approved employee benefit plans administered by the Montana Contractors Association. Plaintiff William Wix is an employee of Pioneer Ready Mix, a United Industries subsidiary that is not a signatory party to a collective bargaining agreement. Plaintiffs contend that §405--requiring non-signatory parties to collective bargaining agreements to pay fringe benefits in the form of cash wages--violates ERISA, which provides a uniform and comprehensive body of federal law to govern employee fringe benefits, including welfare and pension plans. They contend, among other allegations, that Montana's statutory scheme impermissibly dictates that funds originally earmarked for contribution to ERISA benefit plans must be paid to their employees directly as cash wages. Thus, plaintiffs assert that §405 imposes additional conditions, not contemplated by

Congress, on those employers who participate in ERISA benefit plans but who have not signed collective bargaining agreements.

In moving for a declaratory judgment that §405 is preempted, plaintiffs originally named as defendants only Montana's Department of Labor and Industry, and its Commissioner who is charged with administration of the law ("the State"). On October 30, 1989, however, this Court granted a Motion to Intervene brought by the Montana District Council of Laborers and International Union of Operating Engineers, Local 400 ("Unions"). In so ruling, this Court found that the Unions had an interest in "preserving [Montana's] statutory scheme" and the "resulting competitive edge" favoring union employers over those employers who use non-union labor. See Order of October 30, 1989, at 4-5.

Discussion

This Court finds that it has original jurisdiction to decide this declaratory judgment action pursuant to 28 U.S.C. §1331. See generally Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Committee, 891 F.2d 719, 725 (9th Cir. 1989), cert. denied, 111 S.Ct. 72 (1990); Stone & Webster Engineering Corp. v. Ilsley, 690 F.2d 323, 327-28 (2d Cir. 1982), affirmed, 463 U.S. 1220 (1983). Furthermore, the Court finds that a "substantial controversy" exists between the parties, who have adverse and immediate legal interests at stake, depending on the outcome of this

action. See National Basketball Asso. v. SDC Basketball Club, Inc., 815 F.2d 562, 565 (9th Cir.), cert. dismissed, 484 U.S. 960 (1987); Nuclear Engineering Co. v. Scott, 660 F.2d 241, 251-52 (7th Cir. 1981), cert. denied, 455 U.S. 993 (1982).

All parties have moved for summary judgment. Rule 56(c), Fed.R.Civ.P., states that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The parties agree that the question of preemption is a purely legal dispute that may be decided on motions for summary judgment, based upon affidavits and stipulated facts.

Having carefully considered the briefs, arguments, and materials on file, the Court is now prepared to rule.

A. ERISA's Preemption Provision.

ERISA "established a comprehensive federal statutory scheme designed to protect two types of 'employee benefit plans': 'pension' plans and 'welfare' plans." Retirement Fund Trust of Plumbing v. Franchise Tax Board, 909 F.2d 1266, 1269 (9th Cir. 1990) (footnotes omitted). Because Congress intended to create a uniform body of law in this field, ERISA contains a broad preemption provision, "whereby federal law 'will supersede any and all State laws insofar as they may now or

hereafter relate to any employee benefit plan' under the Act." Id. quoting 29 U.S.C. §1144(a) (footnote omitted).1/

The scope of ERISA's preemption provision is one of the most widely litigated issues in labor law. As an initial matter, any analysis of preemption issues "must be guided by respect for the separate spheres of governmental authority preserved in our federalist system." Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 522 (1981). In passing ERISA, the Supreme Court has held that "Congress did not intend to pre-empt areas of traditional state regulation." Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 740 (1985). Yet, ERISA clearly contemplates some preemption of state law. 29 U.S.C. §1144(a).

To strike the proper balance between respect for the states' traditional police powers and ERISA's preemption provisions, the Ninth Circuit Court has devised a two-prong test to determine whether preemption of a state law is appropriate. A state law may be preempted if it both (1) "relates to" and (2) "purports to regulate," directly or indirectly, an employee benefit plan. Hydrostorage, 891 F.2d at 729; Local Union 598, Plumbers & Pipefitters Industry Journeymen & Apprentices Training Fund v. J.A. Jones Constr. Co., 846 F.2d 1213, 1218 (9th Cir.), affirmed, 488 U.S. 881

1/ ERISA contains some specific exceptions to this broad preemption provision. See 29 U.S.C. §1144(b). None of these exceptions apply to the instant case.

(1988). The parameters of this two-pronged test are explained more fully below.

1. State laws that "relate to" ERISA plans.

Generally, "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 108 S.Ct. 2182, 2185 (1988)(citation and emphasis omitted). A state law that directly affects the administration of ERISA plans is therefore preempted. Id. This is true even if the state law does not explicitly mention ERISA plans, and it is true even if the state law advances ERISA's underlying purposes. Id., at 2185-86 ("Legislative 'good intentions' do not save a state law within the broad pre-emptive scope of §514(a) [29 U.S.C. §1144(a)].").

Nevertheless, not every state law that touches on ERISA benefit plans will be preempted. "Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 100 n.21 (1983); see also Retirement Fund Trust, 909 F.2d at 1274; J.A. Jones Constr. Co., 846 F.2d at 1220. Thus, the Ninth Circuit Court recognizes that a "'neutral' state law of general application with a 'tangential' impact on a plan does not 'relate to' ERISA and is not preempted." Retirement Fund Trust, 909 F.2d at 1280-81.

3-9-93
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2. Laws that "purport to regulate" ERISA plans.

The second prong of the Ninth Circuit Court's test for preemption of a state law under ERISA requires that the state law must "purport to regulate" the administration of ERISA plans. "A law purports to regulate a plan if it attempts to reach in one way or another the terms and conditions of employee benefit plans." Hydrostorage, 891 F.2d at 729 (citing J. A. Jones, 846 F.2d at 1218 and Lane v. Goren, 743 F.2d 1337, 1339 (9th Cir. 1984)). Although the criteria for judging whether a statute "purports to regulate" ERISA plans is not entirely clear, the case law reveals that the Courts must examine both (1) the plain language of the statute for explicit references to ERISA, and (2) the overall effects that the statute may have on administration of ERISA plans. See, e.g., Retirement Fund Trust of Plumbing, 909 F.2d at 1281; Hydrostorage, 891 F.2d at 730.2/

2/ Even though the words "purport to regulate" may imply that a statute's explicit purpose must be to affect an ERISA plan before it may be preempted, the case law clearly indicates that a statute may implicitly "purport to regulate" ERISA plans, and therefore may be preempted. The Supreme Court, in fact, consistently demands that the lower courts look at the effects of state laws on ERISA plans, even when the laws are outwardly silent with respect to ERISA. See, e.g., Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 10, 13 (1987) (examining the possible effects of state law on employer's administration of ERISA plan, especially whether state law would unduly complicate plan administration); Metropolitan Life, 471 U.S. at 739 (recognizing that indirect state actions bearing on ERISA plans may encroach on areas of exclusive federal jurisdiction); Alessi, 451 U.S. at 525 (examining effects of workers' compensation law on employer administration of ERISA plan).

Thus, even though a state law may be outwardly silent with respect to its impact on ERISA plans, the law will be preempted--it will be held to "purport to regulate" ERISA plans--if it unduly influences the administration of ERISA plans. Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1404 (9th Cir. 1988) (ERISA preempts only those state laws affecting administration of covered plans); Nevill v. Shell Oil Co., 835 F.2d 209, 212 (9th Cir. 1987) ("[S]tate law is preempted if the conduct sought to be regulated by the state law is part of the administration of an employee benefit plan."). As the Second Circuit Court observed,

> What triggers ERISA preemption is not just any indirect effect on administrative procedures but rather an effect on the primary administrative functions of benefit plans, such as determining an employee's eligibility for a benefit.

Howard v. Gleason Corp., 901 F.2d 1154, 1157 (2d Cir. 1990) (quoting Aetna Life Ins. Co. v. Borges, 869 F.2d 142, 146 (2d Cir.), cert. denied, 110 S.Ct. 57 (1989)).

B. Preemption of §18-2-405, M.C.A.

Turning to the facts of this case, ERISA will only preempt §405: (1) if §405 "relates to" ERISA benefit plans, and (2) if §405 "purports to regulate," either directly or indirectly, ERISA benefit plans. Hydrostorage, 891 F.2d at 726; J.A. Jones Constr. Co., 846 F.2d at 1218. "A law 'relates to' an employee benefit plan . . . if it has some connection with or reference to such a plan." Mackey, 108 S.Ct. at 2185.

Clearly, §405 does not make explicit "reference to" ERISA plans. It speaks only generally of the need for non-union employers to pay "negotiated fringe benefits" as cash wages. For the same reason, §405 does not explicitly "purport to regulate" ERISA plans.

Because the language of §405 is silent with respect to its relationship to ERISA plans, the Court may only find that the state law is preempted (1) if it has some indirect, but significant, "connection with" ERISA benefit plans, and (2) if the overall effect of §405 is to influence the administration of such plans. In application, these two factors merge. The Ninth Circuit Court acknowledges that when a Court finds that a state law influences the administration of ERISA benefit plans, and thus "purports to regulate" them, the state law necessarily has a "connection with" ERISA plans. J.A. Jones Constr. Co., 846 F.2d at 1218. The Court will therefore focus its inquiry on the effects of §405 on the administration of ERISA benefit plans in Montana.

One effect of §405 on employers who are not signatory to collective bargaining agreements is to discourage their participation in ERISA plans. See Affidavit of Lloyd Lockrem, para. 17. Employers using non-union labor who wish both to comply with §405 and to participate on behalf of their employees in ERISA benefit plans must pay fringe benefits twice. Section 405 requires that they pay the fringe benefits in cash wages; ERISA contemplates that the employer will pay

the fringe benefits as contributions to welfare and pension plans. Thus, non-union employers who comply with state law and who participate in ERISA plans are inevitably placed at a competitive disadvantage compared to employers using union labor. See Affidavit of Joel T. Long, para. 11. Their costs of providing fringe benefits is higher.3/

"A statute which mandates employer contributions to benefit plans and which effectively dictates the level at which those contributions must be made has a most direct connection with an employee benefit plan." J.A. Jones Constr. Co., 846 F.2d at 1219 (emphasis added). Because §405 is a mandatory statute and participation in ERISA plans is voluntary, non-union employers faced with paying fringe benefits twice as a result of the state law will choose not participate in ERISA plans if they want to remain competitive with employers using union labor in bidding for public works projects. See Affidavit of Joel T. Long, para. 23. Thus, although §405 does not mandate specific employer contributions to ERISA benefits plans, it does "effectively dictate the level at which those contributions" will be made by employers using non-union labor: The level of contribution will be zero.4/

3/ Both the State and the Unions explicitly recognize that §405 effectively compels employers using non-union labor to pay fringe benefits twice, if they also wish to contribute to ERISA plans. See Commissioner's Brief in Support of Motion for Summary Judgment, at 6; Brief in Support of Unions' Motion for Summary Judgment, at 12.

4/ A drop in non-union employer contributions to ERISA plans is a simple, straightforward economic consequence of §405,

Because §405 will cause non-union employer contributions to ERISA benefit plans to drop, §405 will significantly influence and directly affect the administration of some ERISA plans--it may even cause some plans to fail for lack of funding. This will have a direct effect on "the primary administrative functions of [ERISA] benefit plans." Howard, 901 F.2d at 1157. The Court therefore finds that §405 has a "connection with" and implicitly "purports to regulate" ERISA plans. For this reason, the Court holds that §405 is preempted to the extent that it requires employers who are not signatory to collective bargaining agreements to pay those fringe benefits in cash wages that they would otherwise contribute to ERISA employee benefit plans, as defined by 29 U.S.C §1002 and elsewhere in ERISA.

The Court also believes that preemption of §405 is warranted on a separate ground. Because §405 permits employers who are signatory to collective bargaining agreements to make

4/ not an unsubstantiated fact, as the State and Unions argue. Furthermore, the Court rejects the State's and Unions' contention that §405 should not be preempted because its primary effect is to raise the cost of doing business for employers who use non-unionized workers, and that this is not a sufficient reason for preemption. While §405 may in fact raise some employer costs, it will necessarily have a direct effect on employers' contributions to ERISA plans as well. Because of the double payment problem, employer contributions to ERISA plans will inevitably drop. This effect on the plans themselves, not the employers' costs of doing business, constitutes the Court's principal concern.

fringe benefit contributions to ERISA benefit plans without incurring extra cash wage costs, the Montana statute creates: (1) incentives for employers to sign collective bargaining agreements to reduce the cost of paying fringe benefits under both ERISA and §405, and (2) incentives for employees to unionize so they are not subject to higher income taxes on fringe benefits paid only as cash wages. See General Electric Co. v. New York State Department of Labor, 891 F.2d 25 (2d Cir. 1989), cert. denied, 110 S.Ct. 2603 (1990) (fringe benefits paid as cash may have less value to employees than ERISA plan contributions). Standing alone, ERISA itself favors neither employer-created ERISA benefit plans nor union-sanctioned ERISA plans; the federal statute is neutral. The effect of the Montana law is to advance a goal that Congress has not endorsed in ERISA: it turns ERISA's employee protection provisions into a mechanism to foster a more heavily unionized workforce. Congress clearly did not have this goal in mind when it passed ERISA. See generally H.R. Conf. R. No. 93-1280, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 5038, 5038-39 (ERISA designed to regulate administration of all private pension plans uniformly). For this reason, the Court believes that §405 must also be preempted. Fort Halifax Packing Co., 482 U.S. at 8 (purpose of Congress is the "ultimate touchstone" in ERISA preemption analysis); Shaw, 463 U.S. at 98 (ERISA preempts those laws affecting the underlying

purpose of the Act).5/

In finding that ERISA preempts §405, the Court rejects the State's and the Unions' argument that §405, as part of Montana's prevailing wage statute, is a neutral law of general applicability. These parties argue that the fundamental purpose of the statute is to ensure that "all workers receive the same contribution toward fringe benefits, regardless [of] whether a collective bargaining agreement, an employment contract or a benefit plan exists." See Brief in Support of Commissioner's Motion for Summary Judgment, at 7. Thus, the State and Unions maintain the §405 is analogous to a minimum wage law, and merely represents an exercise of Montana's traditional police powers. In short, they argue that §405 is a "neutral" statute, that has only an incidental effect on ERISA plans, if, in fact, it has any effect at all.

The Court generally agrees that Montana's prevailing wage statute is not preempted by ERISA. Section 18-2-403(2), M.C.A., for example, requiring public works contractors to pay their employees the "standard prevailing wage" including fringe benefits, is a valid expression of the state's interest in protecting local wage standards. As mentioned above, "Congress

5/ The Court recognizes that §405 was originally enacted in 1931, well before Congress passed ERISA. Nevertheless, ERISA's preemption provision applies to "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." Retirement Fund Trust, 909 F.2d at 1269 (quoting 29 U.S.C §1144(a)).

did not intend to preempt areas of traditional state regulation" in passing ERISA. Metropolitan Life, 471 U.S. at 740.

Nevertheless, §405 goes beyond a traditional manifestation of Montana's police powers and is not a "neutral" statute. By its very terms, §405 treats the fringe benefit contributions of employers using union labor differently from the fringe benefit contributions of employers using non-union labor: "Whenever the employer is not [a] signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages." Mont. Code Ann. §18-2-405. Section 405 clearly discriminates between employers using a unionized workforce and employers using non-union labor. The Court therefore rejects the State's and Unions' contention that ERISA does not preempt §405 because it is a neutral law of general applicability.

Conclusion

ERISA preempts any state law that "relates to" and "purports to regulate," either directly or indirectly, employee health, welfare, and pension plans. The Court finds as a matter of law that §18-2-405, M.C.A., discourages fringe benefits contributions to ERISA plans by employers using non-union laborers. As a consequence of these lower contributions, the administration of ERISA plans in Montana will be directly affected. Thus, §405 has a sufficient

connection with, and effect on, the administration of ERISA benefit plans to warrant preemption under 29 U.S.C. §1144(a).

Furthermore, by allowing employers using unionized labor to contribute freely to ERISA plans, while requiring employers using non-unionized laborers to pay fringe benefits in cash before making ERISA plan contributions, §405 turns ERISA's provisions into a device to promote unionization of Montana's workforce. Congress expressed no such preference for union labor in passing ERISA, and Montana law cannot indirectly inject such a goal into a federal statutory scheme. Section 405 must be preempted for this reason as well.

In so ruling, the Court limits the preemptive effect of ERISA to those fringe benefits that implicate the concerns of the federal statute--employee welfare benefit plans and employee pension plans. Montana may still require those employers who are not signatories to collective bargaining agreements to pay other fringe benefits as cash wages.

For the foregoing reasons,

IT IS ORDERED that plaintiffs' Motion for Summary Judgment be and hereby is granted. Section 18-2-405, M.C.A., is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1144(a) to the extent that it requires employers who are not signatories to collective bargaining agreements to pay as cash wages any health, welfare, and pension benefits that they would otherwise contribute to

federally approved ERISA benefit plans, as defined by 29 U.S.C. §1002 and elsewhere in ERISA.

IT IS FURTHER ORDERED that defendant's and defendant-intervenors' Motions for Summary Judgment be and hereby are denied.

The Clerk is directed forthwith to notify counsel for the respective parties of the making of this Order.

Done and dated this 19th day of February, 1991.

James F. Battin
Senior U.S. District Judge

ORDER\8967\02

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR COMMITTEE BILL NO. SB 342

DATE 3/9/93 SPONSOR(S) WILSON

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MICHAEL S. MIZENKO 3233-8TH AV.SO. GT. FALLS	MONT ST ASSO OF Plumbers & Fitters MONT ST Bldg & Const. Council	✓	
Sonny Hoekman	MCA Trusts		✓
[signature]	Salem	X	
Darrell Holzer	mt. st. AFL-CIO	X	
Carl Schweitzer	Mt Const Assoc		—
Ron N. James	Ironworkers	X	
Pam Egan	Mt Family Union AFL-CIO	X	
[signature]	MT Const Elect Wkrs	✓	
GARS ERICSON	MT ST CARPENTERS	—	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Nelson, on March 11, 1993, at 3:05

ROLL CALL

Members Present:
Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: None
Executive Action: SB 91, SB 381, SB 329, SB 223, SB 256, SB 342

EXECUTIVE ACTION ON SB 91

Motion: **REP. SIMON MOVED SB 91 DO BE CONCURRED IN. REP. SIMON MOVED TO AMEND.**

Discussion: **REP. TUSS** asked **REP. SIMON** if diversionary program is defined anywhere?

REP. SIMON told her that he does not know if it is defined in

Chuck Hunter, with the permission of the committee, suggested a wording change that would solve the freight elevator problem.

REP. MILLS called for the question on his amendments. A voice vote was taken. The motion to DO PASS **CARRIED** unanimously.

Motion/Vote: **REP. DRISCOLL MOVED SB 223 DO BE CONCURRED IN AS AMENDED.** The question was called for. A voice vote was taken. the Motion **CARRIED** 10 to 6 with **REP. TUNBY, REP. ELLIS, REP. HANSON, REP. MILLS, REP. BENEDICT AND REP. TASH** voting no. **REP. RICE** will carry SB 223 on the House Floor.

EXECUTIVE ACTION ON SB 256

Motion: **REP. FELAND MOVED SB 256 DO BE CONCURRED IN.**

Discussion: **REP. DRISCOLL** explained the McClure amendments, dated March 9, 1993, to the committee. **REP. DRISCOLL MOVED THE MCCLURE AMENDMENT.** The question was called for. A voice vote was taken. The motion to DO PASS **CARRIED** 15 to 1 with **REP. HANSON** voting no.

REP. SIMON explained his proposed amendments to the committee. He stated that he wants to amend the effective date from "July 1, 1993" to "upon passage". Furthermore, those who bought prior to the passage of this bill will be grandfathered. The question was called for. A voice vote was taken. The motion to DO PASS **CARRIED** unanimously.

REP. DRISCOLL explained the Rice amendments to the committee.

REP. GALVIN stated that he knows a person in Great Falls who would be effected positively by the passage of this bill.

REP. COCCHIARELLA stated that each year in Missoula, out-of-state yard workers go door to door and landscape yards without paying in Montana.

REP. BENEDICT stated that radio competitors come from Idaho and don't have to pay in Montana.

The question was called for on the Rice amendments. The motion to DO PASS **FAILED** with a tie vote.

Motion/Vote: **REP. DRISCOLL MOVED SB 256 BE CONCURRED IN AS AMENDED.** The question was called for. The motion **CARRIED** unanimously. **REP. DRISCOLL** will carry SB 256 on the House floor.

EXECUTIVE ACTION ON SB 342

Motion: **REP. MILLS MOVED SB 342 BE CONCURRED IN.**

Discussion: **REP. HANSON** reported the subcommittee results. He stated that basically the committee agreed unanimously on items dealing with page 1, section 1 and lines 24 and 25, and section 16 page 2.
The committee agreed to take out anything dealing with certified payroll or disbarment.

Motion/Vote: **REP. MILLS MOVED SB 342 DO BE CONCURRED IN AS AMENDED.** The question was called for. The motion to DO PASS the Hanson amendments **CARRIED** with **REP. COCCHIARELLA, REP. TUSS & REP. SQUIRES** voting no.

Vote: The question was called for on the bill. The motion DO BE CONCURRED IN AS AMENDED **CARRIED** unanimously. **REP. DRISCOLL** will carry SB 342 on the House floor.

HOUSE STANDING COMMITTEE REPORT

March 12, 1993
Page 1 of 2

Mr. Speaker: We, the committee on Labor report that Senate Bill 342 (third reading copy -- blue) be concurred in as amended.

Signed: Tom Nelson, Chair

And, that such amendments read: Carried by: Rep. Driscoll

1. Title, lines 6 through 9.
Following: "CONTRACTS;" on line 6
Strike: the remainder of line 6 through "OFFICER;" on line 9

2. Title, line 9.
Strike: "SECTIONS" through "18-2-403,"
Insert: "SECTION"

3. Title, line 10.
Following: line 9
Strike: "18-2-411" through "18-2-432,"

4. Title, line 12.
Following: the first "DATE"
Strike: "AND" through the second "DATE"

5. Page 2, line 7.
Following: "contributions"
Insert: "that meet the requirements of the Employee Retirement Income Security Act of 1974"
Strike: "and"
Insert: "or"

6. Page 2, line 14.
Strike: "other"

7. Page 2, line 15.
Following: "programs"
Insert: "that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are"

8. Page 2, line 20 through page 7, line 15.
Strike: subsections (4) and (5) and sections 2 and 3 in their entirety
Renumber: subsequent sections

Committee Vote:
Yes 14, No 0.

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9. Page 8, lines 16 and 17.
Following: "underpaid" on line 16
Strike: the remainder of line 16 through "." on line 17

10. Page 8, line 20.
Following: "2"
Insert: ", except that appeal of the hearing officer's decision is made directly to district court rather than to the board of personnel appeals"

11. Page 8, line 21 through page 11, line 23.
Strike: sections 5 through 9 in their entirety
Renumber: subsequent sections

12. Page 12, line 2.
Strike: "[Sections 1 and 9] are"
Insert: "[Section 1] is"

13. Page 12, line 5.
Strike: "sections"
Insert: "section"
Strike: "and 9"

14. Page 12, lines 6 through 8.
Strike: section 12 in its entirety
Renumber: subsequent section

SB 342
HOUSE

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 342

Call to Order: By Senator Wilson, on April 19, 1993, at 11:02 a.m.

ROLL CALL

Members Present:
Sen. Bill Wilson, Chair (D)
Sen. Gary Aklestad (R)
Sen. Tom Towe (D)
Rep. Jerry Driscoll (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)

Members Excused: None.

Members Absent: None.

Staff Present:
Eddye McClure, Legislative Council
Rosalyn Cooperman, Conference Committee Secretary

Discussion:

Senator Wilson asked Mr. Lloyd Lockram from the Montana Contractors Association and Trust to give an overview, from his perspective, on SB 342. Mr. Lockram stated there were two bills heard by the Senate Labor Committee, SB 342 and SB 62, which pertained to certified payrolls. He said that at the urging of Senator Towe, all parties, including the Montana Department of Labor, Montana Contractors and the AFL-CIO, agreed to meet to resolve their conflicts over certified payrolls. Mr. Lockram said the Department of Labor did not want certified payrolls for state projects. He said that while SB 342 requires certified payrolls be filed with local governments, local government representatives did not participate in any of the meetings. He noted SB 342, in its unamended form, would require all contractors working on state projects to file certified payrolls and to retain their own records. Mr. Lockram stated that because SB 342 would not substantially change the enforcement procedure, he believed the requirement to file certified payrolls is a waste of paper and time. He said his organization would support the requirement to file certified payrolls on all state jobs if the requirement was aggressively and equitably enforced. According to Mr. Lockram, as a contractor, he is required to file the following forms with federal and state government: federal

withholding, Social Security tax, Medicare, federal unemployment, state withholding, state unemployment and state worker's compensation. He noted he also collects money for a variety of things, including union dues, retirement, vacation pay, apprenticeship training and health care. He said that because SB 342 cannot offer any additional protection for the worker, his organization would not support the bill. Mr. Lockram added that SB 342 should address the problem of "breaking the base" which occurs when the cost of fringe benefits exceed their predetermined amount.

Senator Wilson asked Mr. Lockram if the issue of certified payrolls was the only item he did not support. Mr. Lockram replied yes and added he was philosophically opposed to the idea of allowing only union contractors to "break the base".

Senator Towe asked Mr. Lockram to state his position on each of the amendments offered to SB 342. He asked Mr. Lockram why he objected to the language on page 2, subsection 4. Mr. Lockram replied both subsections 4 and 5 need to be considered together and should not be separated. He said the problem with subsections 4 and 5 is resolved in subsection 1, part (c) which states the welfare and pension contributions must meet the requirements of the Employee Retirement Income Security Act (ERISA) of 1974.

Representative Driscoll asked Mr. Lockram if he would agree to add language which would prohibit non-union contractors from "breaking the base" of 100 hours per month on health insurance. Representative Driscoll stated the language would do the same thing union contractors are currently doing. Mr. Lockram replied Representative Driscoll's statement was not true.

Senator Towe suggested Mr. Gene Fenderson from the Montana District Council of Laborers make some general comments on SB 342. Mr. Fenderson stated SB 342 was substantially amended in the House where the Labor Committee removed nearly all of the pro-union amendments. He said his organization is willing to compromise on SB 342 and find a solution agreeable to both parties. Mr. Fenderson stated the language contained in Section 1, subsections 4 and 5 could be deleted. He added that "the worker's representative" as stated on page 8, lines 19-20 could also be deleted. Mr. Fenderson stated Section 9 of SB 342 should be deleted as well. He said he would like to see all the other stricken language to be reinserted back into SB 342. He said certified payrolls will help the current situation. Mr. Fenderson noted the certified payroll requirements outlined in SB 342 are no different than what is already done by a number of cities and what is also required by all federal projects. He said a number of employees do not pay workers the full amount of their salary which is a serious problem.

Senator Wilson stated he believed the issue of certified payrolls was the only barrier to a compromise on SB 342. He asked

Mr. Chuck Hunter from the Department of Labor to comment on SB 342. Mr. Hunter stated his department has taken no position on SB 342 and will implement or enforce any decision made by the Committee.

Senator Towe asked Mr. Lockram if he objected to Mr. Fenderson's suggestion of reinserting the old Section 2 language pertaining to the definition of basic hourly wage. Mr. Lockram replied the language pertaining to the basic hourly wage was no longer necessary because of the deletion of the sections pertaining to "breaking the base". He added he did not agree with the bill's definition of "basic hourly wage".

Senator Towe asked Mr. Fenderson to respond to Mr. Lockram's comments. Mr. Fenderson stated that because the language contained in subsection 1(a) alludes to the basic hourly rate, it would be important to define the rate at some point in the bill. Mr. Lockram stated he agreed with Mr. Fenderson to the extent that "basic hourly rate" is defined in the Montana Prevailing Wage law. He said the prevailing wage is made up of the basic hourly wage plus any fringe benefits. Mr. Lockram suggested the Department of Labor define "basic hourly wage".

Senator Towe asked Mr. Hunter if "basic hourly rate" should be defined. Mr. Hunter replied a better definition would be helpful since the law is unclear on exactly what is a basic hourly wage. He said "basic hourly wage" as defined in SB 342 could be problematic since it is difficult to determine what is taxable and what is not. Senator Towe requested that Mr. Hunter come up with a definition of a "basic hourly rate".

Senator Towe asked Mr. Lockram why "and other bona fide programs approved by the United States Department of Labor" was deleted from page 5, lines 16-18. Mr. Lockram replied that language was reinstated on page 2, lines 17-19 so programs are required to either meet ERISA guidelines or be approved by the U.S. Department of Labor. Mr. Fenderson stated he did not object to the language reinstatement on page 2, lines 17-19.

Senator Towe asked Mr. Fenderson if similar language should be added if the old Section 2 was reinstated. Mr. Fenderson replied the language contained on pages 3 through 6 is clean-up language requested by Legislative Council. As an example, he noted that "and" had been inserted between "heavy" and "highway" to read "heavy and highway construction" instead of "heavy highway construction". Mr. Fenderson said the clean-up language on those pages should be retained.

Senator Towe asked Mr. Lockram why Section 3 had been stricken from SB 342. Mr. Lockram replied the section was stricken for the same reason Section 2 was deleted. He said he would not object to reinstating Section 3 as long as benefits are required to meet ERISA standards or be approved by the U.S. Department of

Labor. Mr. Fenderson added he would not object to the reinstatement of Section 3 under those conditions.

Senator Aklestad asked Senator Towe if he was requesting that all the underlined language in Section 3 be reinstated. Senator Towe replied that if both sides could agree upon a definition of "basic hourly wage", Sections 2 and 3 could be reinstated as long as the benefits are required to meet ERISA standards or be approved by the U.S. Department of Labor.

Mr. Lockram stated he was still concerned about the employer's ability to "break the base". He asked Mr. Hunter if the language contained in subsection (c) on page 2 could be interpreted as authorization to "break the base" if so required. Mr. Hunter replied the Department of Labor believes subsection (c) on page 2 would allow for the "breaking of the base". He said the language contained in subsection (c) would allow for payment by using any combination of methods. Mr. Hunter noted this language may "go further than the Committee wants to go".

Senator Towe asked Mr. Fenderson to respond to Mr. Hunter's comments. Mr. Fenderson replied that in the federal sector, the base may be broken up to any amount on insurance but can only be broken by 25 percent for pensions. He said there is some protection against this in federal law. Mr. Lockram agreed with Mr. Fenderson's comments but added that "breaking the base" is a serious problem because for every one dollar taken off of a wage, 40 cents goes directly to the contractor. He said the cap on fringe benefits is limited to the cost of the benefit. Mr. Lockram noted SB 342's interpretation of "breaking the base" is consistent with all federal programs administered in the state.

Representative Hanson asked Mr. Lockram if SB 342, in its current form, meets all federal regulations. Mr. Lockram replied that SB 342, in its current form, is consistent with the interpretation of the federal Davis/Bacon Law as it relates to the "breaking of the base". He added he is concerned that without SB 342, the Department of Labor will not permit the "breaking of the base".

Senator Towe asked Mr. Lockram if he would object to reinstating Section 5 since it only serves to clean up existing language. Mr. Lockram replied he did not object.

Senator Towe asked Mr. Lockram if he was adamantly opposed to the notion of certified payrolls as defined in Section 6. Mr. Lockram replied he was not opposed to the idea of certified payrolls but said SB 342 does nothing to enforce the requirement that payrolls be certified. He said SB 342, as it is currently written, creates additional paperwork and nothing more.

Senator Towe asked Mr. Lockram if he believed that enforcement of current law would be improved with the requirement to file certified payrolls as stated in SB 342. Mr. Lockram replied no.

Senator Wilson asked Mr. Lockram how the enforcement mechanism in SB 342 could be improved. Mr. Lockram replied certified payrolls should be submitted to the Department of Labor who then audits the payrolls. He added that compliance officers should visit sites to ensure that abuses do not occur. Mr. Lockram said SB 342 creates additional paperwork and provides no adequate enforcement mechanism.

Representative Hanson stated he was adamantly opposed to Section 6 which pertains to certified payrolls. He said the requirement would only add people and expenses to the Department of Labor; something the state cannot afford.

Representative Mills stated the requirement to file certified payrolls should not be included in SB 342 unless adequate and affordable enforcement measures are guaranteed.

Mr. Fenderson stated he was in complete disagreement with Representatives Hanson and Mills. He said certified payrolls are the only proof a worker has in determining if s/he is being fairly compensated. Mr. Fenderson stated the Committee should either reinstate Section 6 or kill SB 342.

Representative Mills asked Mr. Fenderson who would resolve the problem with workers not being fairly compensated. Mr. Fenderson replied the Department of Labor would address the problem. He said that the main problem with the current system is the lag time in obtaining payroll records from employers who have been turned in by their employees. He said the employers delay transferring payroll information to the Department of Labor until they have had the opportunity to alter their books. Mr. Fenderson stated he believed the request for employers to certify that their payroll was "true and correct" was not asking for much.

Senator Towe asked Mr. Fenderson to respond to Mr. Lockram's statement that the requirement is not enough; the requirement must be enforced. Mr. Fenderson replied that certified payrolls have been invaluable to federal agencies in determining if an employer is paying his/her employees a fair wage. He added he hoped the money collected by prosecuting offenders would be reallocated to the Department for increased enforcement.

Mr. Lockram noted that under existing law, the Department of Labor can subpoena employer payroll records if a complaint is received by an employee. He suggested the penalties be increased for non-compliance and an amendment be adopted to read "whenever any contractor or subcontractor is found by the Commissioner to be in aggravated or willful violation of the labor standard provisions of this chapter, such contractor, subcontractor, or any firm, corporation, partnership or association in which such contractor or subcontractor has substantial interest, shall be ineligible, for a period not to exceed three years, to receive any contracts or subcontracts subject to the provision of this

chapter". Mr. Lockram said that in the absence of certified payrolls, the "cheaters" are the ones who should be penalized. Senator Towe asked Mr. Lockram if he recalled saying he did not object to certified payrolls when he testified in front of the Senate Labor Committee on SB 342. Mr. Lockram replied he did not object to the requirement to file certified payrolls as long as adequate enforcement could be guaranteed. He added that SB 342 does nothing for certified payrolls but makes them a public document.

Senator Towe asked Mr. Lockram if making certified payrolls a public document was better than leaving the current situation alone. Mr. Lockram replied no. Mr. Fenderson stated certified payrolls are already public documents and are required to be filed for all federal jobs.

Senator Towe asked Mr. Lockram why the requirement to file certified payrolls on all state jobs would be so objectionable since the payrolls are required to be filed for all federal jobs. Mr. Lockram replied that the requirement to file certified payrolls on federal jobs is aggressively enforced. He said SB 342, as currently written, would not aggressively enforce this requirement.

Senator Towe stated that while he appreciated Mr. Lockram's concerns, he believes that making certified payrolls public documents would be beneficial and would encourage the Department of Labor to devote more resources toward its enforcement. He asked Mr. Lockram to agree to the requirement for certified payrolls since Mr. Fenderson had agreed to allow for the "breaking of the base". Mr. Lockram replied the language regarding the "breaking of the base" had to be included in SB 342 or it would not be permitted.

Representative Hanson stated that the wage rates are already included in current law. He said SB 342 would adversely affect smaller contractors who do not have the manpower available to deal with the increased paperwork. Representative Hanson stated he would rather see SB 342 die than adopt the requirements for filing certified payrolls. Senator Towe replied that killing SB 342 could potentially endanger Mr. Lockram's business.

Representative Hanson stated he refused to concede on the issue of certified payrolls.

Senator Aklestad asked Mr. Fenderson if, under current law, an individual can file a complaint which must then be processed by the Department of Labor. Mr. Fenderson agreed but stated the problem of cheating on the payroll lies, in general, with the smaller contractors, not the larger ones.

Senator Aklestad asked Mr. Hunter how long the Department of Labor takes to pursue an employee wage complaint. Mr. Hunter

replied it varied from case to case but estimated the average time would be between three to five weeks.

Senator Towe asked Mr. Fenderson to expand on his comments about contractors who falsify payrolls. Mr. Fenderson replied that problems usually occur when contractors do not pay their employees the correct wage for their task. He said it is easy for employers to find employees who will work for lower wages because of current economic conditions.

Senator Aklestad asked Mr. Lockram if he would support SB 342 if the requirement for certified payrolls was reinstated. Mr. Lockram replied he would because of Mr. Fenderson's concession to retain language permitting the "breaking of the base".

Senator Wilson stated he was adamantly in favor of retaining Sections 6 and 7 and asked the other Committee members to state their opinion on SB 342.

Senator Towe stated that during the Senate hearing, Mr. Lockram did not object to the certified payrolls as long as they were able to "break the base". He reminded Representative Hanson that Mr. Lockram's business could be lost if SB 342 was killed by this Committee. Representative Hanson replied he would not support the certified payroll requirement.

Senator Aklestad stated he was not adamantly opposed to certified payrolls as long as the requirement to file them did not create additional paperwork or expense.

Senator Towe asked Mr. Hunter if he had come up with a definition for a "basic hourly wage". Mr. Hunter replied he had a definition but added he was not entirely comfortable with its wording. He said he defined a "basic hourly wage" as "the gross remuneration paid to a worker for services rendered but excluding those payments for fringe benefits for which the worker has no ability to direct or receive". He said the basic hourly wage should define the total hourly rate of pay the worker is able to take home. Mr. Hunter said only those fringe benefits for which the worker has no control over should be excluded.

Senator Towe asked the Committee to delay action on SB 342 until the wording of a "basic hourly wage" could be specifically defined. Senator Aklestad agreed and asked the Committee meet one more time to resolve the issue of certified payrolls.

Note:

After informal discussion, the Conference Committee members agreed on 21 April 1993 to accept a series of amendments to SB 342 (Exhibit #1).

ADJOURNMENT

Adjournment: 12:05 p.m.

Bill Wilson
SENATOR BILL WILSON, Chair

Rosalyn Cooperman
ROSALYN COOPERMAN, Secretary

BW/rc

ROLL CALL

(FREE) CONFERENCE COMMITTEE

ON HOUSE / SENATE BILL # 342

DATE 19 April 1993

NAME	PRESENT	ABSENT	EXCUSED
Senator Wilson, Chair	✓		
Senator Aklestad	✓		
Senator Towe	✓		
Representative Driscoll	✓		
Representative Hanson	✓		
Representative Mills	✓		

Conference Committee
on Senate Bill No. 342
Report No. 1, April 21, 1993

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 342, met and considered: House amendments to Senate Bill No. 342. We recommend that Senate Bill No. 342 (reference copy - salmon) be amended as follows:

1. Title, line 9.
Following: "~~OFFICER,~~"
Insert: REVISING PROCEDURES FOR WAGE CLAIMS;
Strike: "SECTION"
Insert: "SECTIONS 18-2-401, 18-2-403,"

2. Title, line 10.
Following: "18-2-407,"
Insert: "18-2-411, 18-2-423, AND 18-2-432,"

3. Title, line 12.
Following: "~~DATE~~"
Insert: "AND AN APPLICABILITY DATE"

4. Page 7, line 19.
Following: line 18
Insert: "Section 2. Section 18-2-401, MCA, is amended to read:
"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:
(1) A "bona fide resident of Montana" is ~~hereby declared to be~~ a person who, at the time of ~~his~~ employment and immediately prior ~~thereto~~ to the time of employment, has lived in this state in ~~such~~ a manner and for ~~such~~ a time ~~as~~ that is sufficient to clearly justify the conclusion that ~~his~~ the person's past habitation in this state has been coupled with an intention to make it ~~his~~ the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform ~~such~~ labor ~~shall under no circumstance~~ may not be ~~deemed~~ considered to be bona fide residents of Montana within the meaning and for the purpose of this part.
(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.
(3) "Department" means the department of labor and industry provided for in 2-15-1701.
(4) "District" means a prevailing wage rate district established as provided in 18-2-411.
(5) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee

ADOPT

REJECT

Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance ~~provisions~~ that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(6) "Labor" ~~is hereby defined to be~~ means all services in excess of $25,000 performed in construction, maintenance, or remodeling work in ~~all~~ a state, county, municipal, ~~and~~ school ~~work~~ district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work.

(7) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance ~~provisions which~~ that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance ~~provisions, shall~~ must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(8) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 3. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception. (1) In any contract let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under any law of this state, there ~~shall~~ must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy and highway construction, must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions ~~and travel allowance provisions~~, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for ~~such~~ the project.

(4) A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

(5) ~~No~~ A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions of subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from ~~his~~ the contractor's obligation to pay the standard prevailing wage rate and places ~~such~~ the obligation on the public contracting agency.""

Renumber: subsequent sections

5. Page 12.
Following: line 4
Insert: ""Section 5. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."

Section 6. Section 18-2-423, MCA, is amended to read:

"18-2-423. **Submission of payroll records.** If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project. A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department."

Section 7. Section 18-2-432, MCA, is amended to read:

"18-2-432. **Penalty for violation.** (1) If ~~any~~ a person, firm, or corporation ~~shall fail~~ fails to comply with the provisions of this part, the state, county, ~~municipal~~ municipality, ~~or~~ school ~~officers who have~~ district, or officer of a political subdivision that executed the contract shall retain $1,000 of the contract price as liquidated damages for the violation of the terms of the contract and ~~said~~ the money ~~shall~~ must be credited to the proper funds of the state, county, ~~municipal~~ municipality, ~~or~~ school ~~districts~~ district, or political subdivision.

(2) ~~Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court~~ Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any

contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever ~~any~~ an action ~~shall have~~ has been instituted in ~~any~~ a district court in this state against any person, firm, or corporation for the violation of this part, the court in which ~~said~~ the action is pending ~~shall be and it~~ is ~~hereby~~ authorized to issue an injunction to restrain ~~any such~~ the person, firm, or corporation from proceeding with ~~his or its~~ a contract with the state, county, ~~municipal~~ municipality, ~~or~~ school ~~districts~~ district, or political subdivision, pending the final determination of ~~said~~ the instituted action ~~so instituted~~.""

Renumber: subsequent sections

6. Page 12, line 15.
Following: line 14
Insert: "NEW SECTION. Section 10. Applicability. [This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."
Renumber: subsequent section

And that this Conference Committee report be adopted.

For the Senate:

Senator Wilson, Chair

Senator Aklestad

Senator Towe

For the House:

Representative H. S. Hanson, Chair

Representative Driscoll

Representative Mills

Amd. Coord.

Sec. of Senate

Conference Committee

Amendments to Senate Bill No. 342 Exhibit #1
Reference Reading Copy
Date 4-19-93
Requested by the Joint Conference Committee
For the Committee on Bill No. SB 342

Prepared by Eddye McClure
April 19, 1993

JOINT CONFERENCE COMMITTEE REPORT NO. 1
ON SENATE BILL NO. 342

Mr. President and Mr. Speaker:

We, your Joint Conference Committee on Senate Bill 342, met April 19, 1993, and considered:

(1) House Committee on Labor and Employee Relations Amendments to the third reading copy, dated March 12, 1993.

We recommend that Senate Bill No. 342, reference copy, be amended as indicated in the INSTRUCTIONS.

INSTRUCTIONS:

1. Title, line 9.
Following: "~~OFFICER;~~"
Insert: REVISING PROCEDURES FOR WAGE CLAIMS;
Strike: "SECTION"
Insert: "SECTIONS 18-2-401, 18-2-403,"

2. Title, line 10.
Following: "18-2-407,"
Insert: "18-2-411, 18-2-423, AND 18-2-432,"

3. Title, line 12.
Following: "~~DATE~~"
Insert: "AND AN APPLICABILITY DATE"

4. Page 7, line 19.
Following: line 18
Insert: "Section 2. Section 18-2-401, MCA, is amended to read:
"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:
(1) A "bona fide resident of Montana" is ~~hereby declared to be~~ a person who, at the time of ~~his~~ employment and immediately prior ~~thereto~~ to the time of employment, has lived in this state in ~~such~~ a manner and for ~~such~~ a time ~~as~~ that is sufficient to clearly justify the conclusion that ~~his~~ the person's past habitation in this state has been coupled with an intention to make it ~~his~~ the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform ~~such~~ labor ~~shall under no circumstance~~ may not be ~~deemed~~ considered to be bona fide residents of Montana within the

meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "District" means a prevailing wage rate district established as provided in 18-2-411.

(5) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor, ~~and~~ travel allowance ~~provisions~~, determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(6) "Labor" ~~is hereby defined to be~~ means all services in excess of $25,000 performed in construction, maintenance, or remodeling work in ~~all~~ a state, county, municipal, ~~and~~ school ~~work~~ district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work.

(7) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions ~~and~~ , that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance ~~provisions which are~~ that is paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, ~~and travel allowance provisions~~ that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor, and travel allowance ~~shall~~ must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(8) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 3. Section 18-2-403, MCA, is amended to read:

"18-2-403. **Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception.** (1) In any contract let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under

any law of this state, there ~~shall~~ must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy and highway construction, must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions~~, and travel allowance provisions,~~ that:

(i) meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States Department of Labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for ~~such~~ the project.

(4) A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

(5) ~~No~~ A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions of subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from ~~his~~ the contractor's obligation to pay the standard prevailing wage rate and places ~~such~~ the obligation on the public contracting agency.""

Renumber: subsequent sections

5. Page 12.
Following: line 4
Insert: ""Section 5. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."

Section 6. Section 18-2-423, MCA, is amended to read:

"18-2-423. **Submission of payroll records.** If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project. A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department."

Section 7. Section 18-2-432, MCA, is amended to read:

"18-2-432. **Penalty for violation.** (1) If ~~any~~ a person, firm, or corporation ~~shall fail~~ fails to comply with the provisions of this part, the state, county, ~~municipal~~ municipality, ~~or~~ school ~~officers who have~~ district, or officer of a political subdivision that executed the contract shall retain $1,000 of the contract price as liquidated damages for the violation of the terms of the contract and ~~said~~ the money ~~shall~~ must be credited to the proper funds of the state, county, ~~municipal~~ municipality, ~~or~~ school ~~districts~~ district, or political subdivision.

(2) ~~Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court~~ Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever ~~any~~ an action ~~shall have~~ has been instituted in ~~any~~ a district court in this state against any person, firm, or corporation for the violation of this part, the court in which ~~said~~ the action is pending ~~shall be and it~~ is ~~hereby~~ authorized to issue an injunction to restrain ~~any such~~ the person, firm, or corporation from proceeding with ~~his or its~~ a contract with the state, county, ~~municipal~~ municipality, ~~or~~ school ~~districts~~

district, or political subdivision, pending the final determination of ~~said~~ the instituted action ~~so instituted~~.""

Renumber: subsequent sections

6. Page 12, line 15.
Following: line 14
Insert: "NEW SECTION. Section 10. **Applicability.** [This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."
Renumber: subsequent section